



Senate

General Assembly

February Session, 2012

File No. 166

Senate Bill No. 385

Senate, March 29, 2012

The Committee on Transportation reported through SEN. MAYNARD of the 18th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING OWNER OPERATORS IN THE MOTOR CARRIER INDUSTRY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (5) of subsection (a) of section 31-222 of the
2 general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective from passage*):

4 (5) No provision of this chapter, except section 31-254, shall apply to
5 any of the following types of service or employment, except when
6 voluntarily assumed, as provided in section 31-223:

7 (A) Service performed by an individual in the employ of his son,
8 daughter or spouse, and service performed by a child under the age of
9 eighteen in the employ of his father or mother;

10 (B) Service performed in the employ of the United States
11 government, any other state, any town or city of any other state, or any
12 political subdivision or instrumentality of any of them; except that, to

13 the extent that the Congress of the United States permits states to
14 require any instrumentalities of the United States to make
15 contributions to an unemployment fund under a state unemployment
16 compensation law, all of the provisions of this chapter shall be
17 applicable to such instrumentalities and to services performed for such
18 instrumentalities; provided, if this state is not certified for any year by
19 the Secretary of Labor under Section 3304 of the Federal Internal
20 Revenue Code, the contributions required of such instrumentalities
21 with respect to such year shall be refunded by the administrator from
22 the fund in the same manner and within the same period as is
23 provided in sections 31-268, 31-269, 31-270 and 31-271 with respect to
24 contributions erroneously collected;

25 (C) Service with respect to which unemployment compensation is
26 payable under an unemployment compensation plan established by an
27 Act of Congress, provided the administrator is authorized to enter into
28 agreements with the proper agencies under such Act of Congress, to
29 provide reciprocal treatment to individuals who have, after acquiring
30 potential rights to benefits under this chapter, acquired rights to
31 unemployment compensation under such Act of Congress, or who
32 have, after acquiring potential rights to unemployment compensation
33 under such Act of Congress, acquired rights to benefits under this
34 chapter, and provided further, in computing benefits the administrator
35 shall disregard all wages paid by employers who fall within the
36 definition of "employer" in Section 1(a) of the Federal Railroad
37 Unemployment Insurance Act;

38 (D) Service performed in this state or elsewhere with respect to
39 which contributions are required and paid under an unemployment
40 compensation law of any other state;

41 (E) Service not in the course of the employer's trade or business
42 performed in any calendar quarter by an employee, unless the cash
43 remuneration paid for such service is fifty dollars or more and such
44 service is performed by an individual who is regularly employed by
45 such employer to perform such service. For purposes of this

46 subparagraph, an individual shall be deemed to be regularly
47 employed by an employer during a calendar quarter only if (i) on each
48 of some twenty-four days during such quarter such individual
49 performs for such employer for some portion of the day service not in
50 the course of the employer's trade or business; or (ii) such individual
51 was so employed by such employer in the performance of such service
52 during the preceding calendar quarter;

53 (F) Service performed in any calendar quarter in the employ of any
54 organization exempt from income tax under Section 501(a) of the
55 Internal Revenue Code or under Section 521 of said code excluding
56 any organization described in Section 401(a) of said code, if the
57 remuneration for such service is less than fifty dollars;

58 (G) Service performed in the employ of a school, college, or
59 university if such service is performed (i) by a student who is enrolled
60 and is regularly attending classes at such school, college or university,
61 or (ii) by the spouse of such a student, if such spouse is advised at the
62 time such spouse commences to perform such service, that (I) the
63 employment of such spouse to perform such service is provided under
64 a program to provide financial assistance to such student by such
65 school, college or university, and (II) such employment will not be
66 covered by any program of unemployment insurance;

67 (H) Service performed as a student nurse in the employ of a hospital
68 or a nurses' training school chartered pursuant to state law by an
69 individual who is enrolled and is regularly attending classes in such
70 nurses' training school, and service performed as an intern in the
71 employ of a hospital by an individual who has completed a four years'
72 course in a medical school chartered or approved pursuant to state
73 law;

74 (I) Service performed by an individual under the age of eighteen in
75 the delivery or distribution of newspapers or shopping news, not
76 including delivery or distribution to any point for subsequent delivery
77 or distribution;

78 (J) Service performed by an individual who is enrolled, at a
79 nonprofit or public educational institution which normally maintains a
80 regular faculty and curriculum and normally has a regularly organized
81 body of students in attendance at the place where its educational
82 activities are carried on, as a student in a full-time program, taken for
83 credit at such institution, which combines academic instruction with
84 work experience, if such service is an integral part of such program,
85 and such institution has so certified to the employer, except that this
86 subparagraph shall not apply to service performed in a program
87 established for or on behalf of an employer or group of employers;

88 (K) Service performed by an individual as an insurance agent, other
89 than an industrial life insurance agent, and service performed by an
90 individual as a real estate salesperson, if all such service is performed
91 for remuneration solely by way of commission;

92 (L) Service performed in the employ of a hospital, if such service is
93 performed by a patient of the hospital, as defined in subsection (h) of
94 this section;

95 (M) Service performed by an individual in the employ of any town,
96 city or other political subdivision, provided such service is performed
97 in lieu of payment of any delinquent tax payable to such town, city or
98 other political subdivision;

99 (N) Service performed by an individual as an outside sales
100 representative of a for-profit travel agency if substantially all of such
101 service is performed outside of any travel agency premises, and all
102 such service is performed for remuneration solely by way of
103 commission. For purposes of this subparagraph, an "outside sales
104 representative" means an individual whose services to a for-profit
105 travel agency are performed under such travel agency's Airlines
106 Reporting Corporation accreditation, or the International Airlines
107 Travel Agent Network endorsement; [and]

108 (O) Service performed by the operator of an escort motor vehicle,
109 for an oversize vehicle, overweight vehicle or a vehicle with a load

110 traveling upon any Connecticut highway pursuant to a permit
111 required by section 14-270, and the regulations adopted pursuant to
112 said section, provided the following conditions are met:

113 (i) The service is provided by an individual operator who is
114 engaged in the business or trade of providing such escort motor
115 vehicle;

116 (ii) The operator is, and has been, free from control and direction by
117 any other business or other person in connection with the actual
118 performance of such services;

119 (iii) The operator owns his or her own vehicle, and statutorily
120 required equipment, and exclusively employs this equipment in
121 providing such services; and

122 (iv) The operator is treated as an independent contractor for all
123 purposes, including, but not limited to, federal and state taxation,
124 workers' compensation, choice of hours worked and choice to accept
125 referrals from multiple entities without consequence; and

126 (P) Service performed in intrastate or interstate commerce by the
127 operator of a motor carrier operating or causing to be operated on any
128 highway in this state any qualified motor vehicle, as defined in section
129 12-478, provided the following conditions are met:

130 (i) The operator owns the motor vehicle or holds it under a bona
131 fide lease arrangement, provided any lease arrangement, loan or loan
132 guarantee is not with the contracting entity, with the exception of a
133 lease arrangement with the contracting entity for the use of a substitute
134 motor vehicle to perform services in the event that the operator's
135 primary motor vehicle is being serviced or repaired;

136 (ii) The operator is responsible for substantially all of the principal
137 operating costs of the motor vehicle, including, but not limited to,
138 maintenance, fuel, repairs, supplies, vehicle insurance and personal
139 expenses, provided the operator may be paid by the contracting entity
140 for operating costs directly related to services rendered by the

141 operator, including, but not limited to, tolls, permits, communication
 142 charges and loading fees;

143 (iii) The operator is responsible for supplying the necessary services
 144 to operate the motor vehicle;

145 (iv) The operator's compensation is based on factors related to the
 146 work performed, including, but not limited to, mileage-based rates, a
 147 percentage of any schedule of rates, or by the hours or time expended
 148 in relation to actual performance of the contracted-for services;

149 (v) The operator substantially controls the means and manner of
 150 performing services, which shall be evidenced by doing so in
 151 conformance with all state and federal requirements and specifications
 152 of the shipper; and

153 (vi) The operating agreement includes provisions that meet the
 154 conditions in clauses (i) to (v), inclusive, of this subparagraph; that the
 155 operator acknowledges the operator's status as an independent
 156 contractor and not an employee of the contracting entity; and that such
 157 operating agreement shall be presented to the Labor Department upon
 158 request.

This act shall take effect as follows and shall amend the following sections:		
Section 1	from passage	31-222(a)(5)

TRA *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Labor Dept.	UCF - Revenue Loss	\$1.4 million	\$1.4 million

Note: UCF=Unemployment Compensation Fund

Municipal Impact: None

Explanation

The bill results in a net revenue loss of \$1.4 million. It classifies truck drivers who meet certain conditions as independent contractors, not employees, for the purpose of unemployment compensation laws. As a result, these drivers cannot receive unemployment compensation benefits, and the companies who employ them do not have to pay unemployment compensation taxes on the drivers' pay.

The Unemployment Compensation Fund will realize a loss of \$5 million in revenue associated with companies not paying unemployment compensation taxes. However, this revenue loss is partially offset by a savings of \$3.6 million associated with a reduction in unemployment compensation benefits paid to former employees who would no longer be eligible to receive benefits under this bill. This results in a net revenue loss to the Unemployment Compensation Fund of \$1.4 million.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**SB 385*****AN ACT CONCERNING OWNER OPERATORS IN THE MOTOR CARRIER INDUSTRY.*****SUMMARY:**

This bill makes truck drivers who meet certain conditions independent contractors, rather than employees, for purposes of unemployment compensation law. As independent contractors they are not eligible for unemployment compensation benefits, and the entities that hire them ("contracting entity") are not responsible for paying unemployment taxes on the drivers' pay.

EFFECTIVE DATE: Upon passage

CRITERIA FOR INDEPENDENT CONTRACTOR DRIVERS

The bill exempts a truck driver ("owner-operator") from the unemployment compensation law's definition of employee if he or she drives, or causes to be driven, certain large trucks ("qualified motor vehicle") (see BACKGROUND) in either intrastate or interstate commerce and:

1. owns or leases the vehicle, provided the lease, loan, or loan guarantee is not with the contracting entity (unless the lease is for a substitute motor vehicle when the operator's primary vehicle is being serviced or repaired);
2. is responsible for substantially all of the vehicle's principal operating costs, including maintenance, fuel, repairs, supplies, insurance, and personal expenses, provided the contracting entity may pay the operator for operating costs directly related to services the owner-operator renders, including tolls, permits, communication charges, and loading fees;

3. is responsible for supplying the necessary services to operate the vehicle;
4. the operator's compensation is based on work performed, including mileage-based rates, a percentage of any rate schedule, or the hours or time spent actually performing the contracted-for services;
5. the operator substantially controls the means and manner of performing services, and does so according to federal and state requirements and the shipper's specifications;
6. the operating agreement includes provisions meeting the above conditions and must be presented to the state labor department on request; and
7. the operator acknowledges his or her status as an independent contractor and not an employee of the contracting entity.

By law (CGS § 31-222 (a)(1)(B)(ii)), to be considered an independent contractor a person must:

1. be free from control and direction in connection with the performance of the service, both under his or her contract of hire and in fact;
2. perform the service either outside the employer's usual course of business or outside of all the employer's places of business; and
3. be customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the service performed.

BACKGROUND

Qualified Motor Vehicle

By law, a qualified motor vehicle is one used, designed, or maintained to carry people or property that (1) has two axles and a

gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds; or (2) has at least three axles, regardless of weight; or (3) is used in combination, and the combined gross vehicle weight or registered gross vehicle weight exceeds 26,000 pounds. But it does not include a recreational vehicle that an individual uses exclusively for personal pleasure and not for any trade or business (CGS § 12-478 (4)).

COMMITTEE ACTION

Transportation Committee

Joint Favorable

Yea 37 Nay 0 (03/14/2012)